BEFORE THE DIRECTOR OF
THE ARIZONA HEALTH CARE
COST CONTAINMENT SYSTEM

Tri-City Behavioral Health Services v. ADHS and AHCCCS Administration 01F-P06290003-AHC In Re: Tri-City Behavioral Health Services	DIRECTOR'S DECISION

PURSUANT TO the authority granted to me by A.R.S. §§ 41-1092.08 (B) and 36-2903.01 (B) (4) and in consideration of the record in the above matter, I hereby make the following Decision and Order:

IT IS ORDERED that the attached Recommended Decision of Administrative Law Judge dated May 29, 2001, by the Office of Administrative Hearings Administrative Law Judge in this matter is supported by substantial evidence, is adopted as part of this Decision and is incorporated herein by reference as though fully set forth verbatim. The Recommended Decision of Administrative Law Judge is therefore accepted in its entirety.

IT IS FURTHER ORDERED that this grievance appeal is denied.

1. This administrative hearing is the result of a dispute that began between Complainant Tri-City Behavioral Services, Inc. ("TriCity") and ComCare, Inc. ("ComCare") regarding ComCare's refusal to reimburse TriCity for coinsurance and deductible ("CID") bad debt payments that TriCity incurred while providing partial hospitalization services to clients who qualified as dual eligible for Medicare and Medicaid services (QMB eligible individuals). During fiscal years 1996 through early 1999, TriCity promulgated 3,800 separate claim forms for services provided to such dual eligible individuals. Although Medicare reimburses the CIDs that are deemed bad debts, the provider must first attempt collection of the CID from any third party payor. Medicare's fiscal intermediary responsible for paying such bad debts (Blue Cross) took the position that AHCCCS or its program contractor was responsible for the CID payments that ADHS or its subcontractor (in this case, ComCare) would be responsible for "all Medicare coinsurance and deductibles for Medicaid services . . . covered by AHCCCS and provided on a fee-for services basis within the ADHS network . . . ."

2. However, ComCare denied responsibility for the payments as such a third party payor. By letter dated April 8, 1997, ComCare issued a blanket denial letter covering all such claims; ComCare refused acceptance of the actual claims. AHCCCS also refused acceptance of the claims.

3. In June 1998, TriCity failed a complaint in federal court, naming Blue Cross, the Arizona Health Care Cost Containment System ("AHCCCS"), ComCare and the Arizona Department of Health Services

("ADHS") as defendants in an attempt to receive payment on the CID claims. However, this case was dismissed on July 27, 1998, due to TriCity's failure to exhaust administrative remedies.

4. On August 4, 1998, TriCity therefore filed a formal grievance with ComCare, but not with ADHS, regarding the CIDs. Although ComCare denied the grievance on December 9, 1998, TriCity had already filed an appeal with AHCCCS (but not ADHS) in the interim (On November 25, 1998) due to ComCare's failure to issue a timely decision.

5. An AHCCCS hearing was conducted and by Director's Decision dated June 25, 1999, TriCity's grievance appeal was sustained as to $400,000.00 of its total claim of $1,055,374.00 against ComCare, the rest of TriCity's claim relating to dates of service prior to August 5, 1997, that the AHCCCS Directors Decision concluded had been filed untimely. The AHCCCS Director's Decision concluded that the responsibility for CIDs was included as part of AHCCCS' contract with ADHS and its subcontractors, and it assumed that this responsibility had been passed on by ADHS to ComCare in its subcontract with ComCare.

6. However, ComCare appealed the AHCCCS Director's Decision to Superior Court, where Judge Susan Bolton ruled on March 13, 2000, that ADHS had not passed its contractual obligation with AHCCCS on to its subcontractor ComCare.

7. Thereafter, on April 13, 2000, TriCity made its first request to ADHS for an ADHS determination in this matter. This request was in a form of a letter expressly stating: "TriCity believes that the attached letter and Superior Court order is the only documentation necessary to resolve this issue, at least until a decision is made that AHCCCS or ADHS should have accepted and reviewed the bad debt claims." The referenced letter was from Branch McNeal, AHCCCS Assistant Director of Managed Care, to John Phin, TriCity Chief Executive Officer. This letter was dated December 30, 1998, and expressly stated that ADHS would be responsible for paying the Medicare CIDs; this letter also set forth the appropriate grievance and appeal procedure, noting that" [a] grievance decision by the RBHA can be appealed to ADHS and then to AHCCCS." The referenced Superior Court order was the Minute Order of Judge Susan Bolton dated March 13, 2000.

8. TriCity's April 13, 2000, submission to ADHS is untimely. First of all, Judge Bolton's Minute Order is neither an appealable agency action pursuant to A.R.S. §41-1092 nor an adverse action by a state agency subject to review under A.A.C. R9-22-804, A.R.S. §41-1092 or ADHS Policy 2.15. Judge Bolton's Order does not constitute an appealable agency action from which TriCity may seek some sort of relief in this administrative forum, and does not serve to render TriCity's April 13, 2000, submission to ADHS timely. Whether one views the letter from Branch McNeal as a claim denial or adverse action, TriCity had, at most, twelve months to initiate a grievance. TriCity's April 13, 2000, submission to ADHS is untimely on its face. The record in this

matter establishes that TriCity could have appealed to ADHS the blanket denial letter it received from ComCare, and could have appealed to ADHS ComCare's decision finding TriCity's claims untimely, yet TriCity did not appeal to ADHS in any of these instances, in violation of ADHS Policy 2.15, which TriCity was obligated to comply with pursuant to its contract with ComCare. As concluded by the Administrative Law Judge, for these and numerous other reasons, TriCity has failed to satisfy administrative grievance filing requirements.

9. With regard to AHCCCS, Judge Bolton's Minute Order dated March 13, 2000, wherein she concluded that AHCCCS had contractually delegated to ADHS the responsibility to process the CID claims, constitutes res judicata as to this issue. Accordingly, ADHS, not AHCCCS, is the responsible payor of the CID claims at issue in this matter.

10. Even if this matter were not appropriately denied due to TriCity's failure to file a grievance or grievance appeal with ADHS in a timely manner, this matter would nonetheless appropriately be denied due to TriCity's failure to file its claims with ADHS in a timely manner as prescribed by applicable law. Pursuant to A.R.S. §36-2904 (H), TriCity was required to timely and properly submit its claims to ADHS within twelve (12) months of each respective date of service. As found by the Administrative Law Judge, TriCity has failed to meet its burden of proof of showing, by a preponderance of the evidence, that it submitted its claims to ADHS within the time frames prescribed by A.R.S. §36-2904 (H).

11. Furthermore, as also concluded by the Administrative Law Judge, TriCity's failure to comply with claim submission deadlines and grievance filing deadlines cannot be legally excused. Assuming, arguendo, that equitable estoppel can be asserted against a governmental agency such as AHCCCS or ADHS, TriCity has failed to prove, by a preponderance of the evidence, any of the elements of estoppel. See Valencia Energy v. Arizona Dept. Of Revenue, 191 Ariz. 565, 578, 958 P. 2d 1256, 1268 (1998). TriCity has not demonstrated any affirmative acts by ADHS inconsistent with a position it later adopted and therefore cannot demonstrate justifiable reliance on any such affirmative acts or detriment suffered as a result of any such acts. Indeed, TriCity's decisions were made in reliance on the counsel of a cadre of professional experts hired by TriCity to provide advice in accounting, law, claims filing, claims processing and collection, and not on any wrongful or affirmative misconduct on the part of ADHS.

12. For all of the foregoing reasons, TriCity's grievance appeal is denied. For the reasons set forth by the Administrative Law Judge, the Director of AHCCCS has primary jurisdiction of the issues presented herein, and this Decision therefore constitutes exhaustion of administrative remedies as to AHCCCS and ADHS should TriCity elect to appeal this matter to Superior Court rather than filing a Motion for Rehearing or Review.

If you disagree with this decision, you may ask the AHCCCS Administration to reconsider its decision or you can appeal to the Superior Court. If you choose to file a Motion for Rehearing or Review, it must be in writing and must describe one of the causes for rehearing or review mentioned in the attachment. See Arizona Administrative Code R9-22-801 (F). Pursuant to A.R.S. § 41-1092.09, a Motion for Rehearing or Review may be filed with the AHCCCS Administration no later than thirty (30) days after service of this Director's Decision. A Motion for Rehearing or Review is not required in order to exhaust administrative remedies; you may choose to appeal directly to court. If you choose to appeal directly to court, you must commence a legal action in Superior court in accordance with the provisions of A.R.S. §§ 12-901 through 12-914, and you must do so within thirty-five (35) days after the personal delivery or mailing of this decision.

s/Todd J. Jensen
Administrative Hearing
Decision Administrator
Director's Designee

Original sent by certified mail
this 28th day of June, 2001, to:

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By _____

Copy hand delivered this 28th day of June, 2001, to:

Cliff J. Vanell, Director
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Phoenix, Arizona 85007

PB/TJJ/tjj

ATTACHMENT TO DIRECTOR'S DECISION

A rehearing or review may be granted only if you can establish one of the following causes:

1. Irregularity in the proceedings of the hearing that deprived you of a fair hearing;

2. Misconduct of a party or an agency;

3. Newly discovered material evidence, that could not, with reasonable diligence, have been discovered and produced at the hearing;

4. That the Director's Decision is the result of passion or prejudice;

5. That the Director's Decision is not justified by the evidence or is contrary to law; or,

6. Good cause is established for the nonappearance of a party at the hearing.

Please note: If you choose to file a Motion for Rehearing or Review you have thirty (30) days to do so. The thirty (30) days start five (5) days after the postmark date of the Director's Decision if the Decision is mailed to you. Also, the Motion for Rehearing or Review must be received by the AHCCCS Administration by the thirtieth (30th) day; if your Motion for Rehearing or Review is mailed or postmarked on or before the thirtieth (30th) day, but not received by AHCCCS until after the thirtieth (30th) day, it will be considered untimely and will be

denied. If you do file a Motion for Rehearing or Review, you should mail a copy fo your Motion to all other parties.